REMARKS

This Application has been carefully reviewed in light of the Office Action mailed December 29, 2004. In order to advance prosecution of this case, Applicants amend Claims 1-3, 6, 10-13, 16, 20-23, 26 and 30, and cancel Claims 7-8, 17-18, 27-28 and 31-34. Applicants respectfully request reconsideration and favorable action in this case.

Section 112 Rejections

The Office Action rejects Claims 8, 18 and 28 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants have canceled Claims 8, 18 and 28, which renders the rejections of these claims moot.

Section 103(a) Rejections

The Office Action rejects Claims 1-34 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,658,027 issued to Kramer et al. ("*Kramer*"), in view of U.S. Patent No. 6,249,757 issued to Cason ("*Cason*"). Applicants respectfully traverse these rejections for the reasons stated below.

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." (MPEP § 2143). First, Applicants respectfully submit that there is no suggestion or motivation in any of the references or in the knowledge generally available to one of ordinary skill in the art to make the proposed combination. Second, Applicants respectfully submit that proposed combination of references does not teach or suggest all the claim limitations.

No Motivation to Combine

With respect to each of the independent claims, the Examiner states that *Cason's* voice activity detection "can be easily adopted by one of ordinary skill in the art into the method and logic of Kramer et al. to provide data flow control (or noise reduction and interference suppression) based on the energy level of the payload signal within the packet to improve the audio/voice signal quality." (Office Action, at pages 3, 4, 5, 6). Thus, the reason given for the motivation to combine *Kramer* and *Cason* is to improve the audio/voice signal quality, which is merely a perceived advantage of the combination. Such a perceived advantage is certainly not "evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness," as mandated by *Sang Su Lee*[1] and other Federal Circuit cases. The Examiner is reminded that "[t]he factual inquiry whether to combine references must be thorough and searching." (*Sang-Su Lee,* 277 F.3d 1338, 1343). And "[an] examiners conclusory statements . . . do not adequately address the issue of motivation to combine." *Id.* The Examiner's reasoning falls well short of providing the required evidence of a motivation to combine the prior art references and, hence, the Examiner has not established a *prima facie* case of obviousness.

Applicants also respectfully submit that a skilled artisan would not be motivated to combine *Kramer* and *Cason* because a substantial reconstruction and redesign of the elements (e.g., microprocessor and/or DSP) in *Kramer* would be needed if *Cason* was combined, which is further evidence of no motivation to combine. (*See* MPEP § 2143.01).

Therefore, for at least this reason, Applicants respectfully submit that the Examiner has not provided a *prima facie* case of obviousness. Accordingly, independent Claims 1, 11 and 21, as amended, are allowable, as well as their respective dependent claims. Reconsideration and favorable action are respectfully requested.

All Claim Limitations Not Taught or Suggested

Applicants respectfully submit that neither *Kramer* nor *Cason* teach or suggest all the claim limitations of independent Claims 1, 11 and 21, as amended. For example, Claim 1 recites "comparing an energy level of a payload signal of the packet to an energy level of a payload signal of a previous packet; and either dropping or playing the packet based on the

[1] *In re Sang-Su Lee,* 277 F.3d 1338 (Fed. Cir. 2002).

comparison." Applicants cannot find these limitations in either *Kramer* or *Cason*. First, *Cason* merely states at col. 3, line 62 to col. 4, line 7 that:

> Beginning at time T_1, and through time T_2, the signal is shown to include voice activity. Consequently, at time T_1, the energy level in the input signal quickly increases, and at time T_2, the energy level quickly decreases. During the course of the voice activity, there may naturally be pauses and variations in the energy level of the signal, such as the exemplary pause illustrated between times T_A and T_B. Further, although not shown in the timing chart, exemplary signal s(t) will continue to contain noise after time T_1. Since this noise is typically low in magnitude compared to the voice activity, the noise waveform will slightly modulate the voice activity curve.

This passage says nothing about comparing an energy level of a payload signal of a packet to an energy level of a payload signal of a previous packet. Even if *Cason* did do this comparison, which it does not, *Kramer* certainly does not drop or play the packet based on this type of comparison. *Kramer* inserts or discards frames from a jitter buffer based on criteria of single frames or the condition of the jitter buffer.

Therefore, for this additional reason, Applicants respectfully submit that the Examiner has not provided a *prima facie* case of obviousness. Accordingly, independent Claims 1, 11 and 21, as amended, are allowable, as well as their respective dependent claims. Reconsideration and favorable action are respectfully requested.

CONCLUSIONS

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

Applicants believe no fee is due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. **02-0384** of **Baker Botts L.L.P.**

Respectfully submitted,

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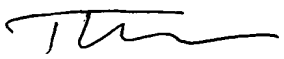

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